

# **Michigan Tax Tribunal**

## **Guide to Mediation**

**October 2023**

# MTT Guide to Mediation

This guide is designed to provide information to parties and mediators for their participation in the Michigan Tax Tribunal (MTT) Mediation Program. MCL 205.731 provides the Tribunal with jurisdiction over mediation of a proceeding before the Tribunal. The Tribunal's Mediation Program provides for facilitative mediation of cases by approved mediators. During mediation, the parties will discuss issues in an effort to settle the case.

## 1. What is mediation?

“‘Mediation’ means a voluntary process in which a mediator facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement.” MCL 205.703(c).

In other words, in mediation the parties, with the assistance of an independent third party known as a mediator, have the ability to resolve their issues instead of going to a hearing and presenting their cases to a judge. Each party meets separately with the mediator and explains its case and how it would like the issues resolved. The mediator will not make any decisions. Instead, the mediator will act as a go-between and assist the parties in reaching a satisfactory resolution.

“‘Mediator’ means a neutral third party who is certified by the tribunal . . . as a mediator in a proceeding before the tribunal . . . , and who is agreed to by the parties.” MCL 205.703(d).

A mediator is not a judge or an employee of the Tribunal.

## 2. Mediation Clerk

The Tribunal's Chief Clerk is designated as the Mediation Clerk who, along with designated deputy chief clerks, shall maintain all records pertaining to the Mediation Program, including mediator applications and the Mediation Roster. The Mediation Clerk oversees the processing of Stipulations for Mediation, issues Orders for Mediation, and tracks the progress of cases through the mediation process.

## 3. How Mediation Works

### a) Eligible Cases

After a petition and answer are filed, any case currently pending before the Tribunal, in both the Entire Tribunal and Small Claims Divisions, is eligible to be referred to mediation. (Should we mention Notice of Filing?)

### b) Referral of Case to Mediation

Because mediation is a voluntary process, the Tribunal will only order a case to

mediation if both parties have properly stipulated to mediation. The Tribunal will order a case to mediation if:

- (a) The parties file a stipulation agreeing to participate in mediation,
- (b) The stipulation designates a mediator selected from the list of mediators certified and published by the Tribunal,
- (c) The stipulation specifies that the selected mediator has disclosed any potential basis for disqualification, and
- (d) The stipulation specifies that the parties and the selected mediator have agreed to the mediator's compensation, if any, and the payment of that compensation. Mediators determine their own hourly fee, so the cost will vary.

A Stipulation for Mediation form is available for the parties to use and is located [here](#).

If the Tribunal grants the parties' Stipulation for Mediation, an Order for Mediation will be issued. The Order will specify the date by which mediation must be completed, address all proceedings and deadlines previously scheduled by the Tribunal, and place the case in abeyance pending the completion of mediation.

c) Finding a Mediator

A list of mediators certified by the Tribunal is available to the public on the Tribunal's website [here](#). The Mediator Roster will include the following information:

- (a) The hourly rate charged by the mediator for their mediation services.
- (b) The type of tax the mediator is certified to mediate.
- (c) A summary of the mediator's experience and training.
- (d) The forum in which the mediator is certified to practice.

Copies of the Mediator Roster may also be obtained from the Mediation Clerk by emailing the Tribunal at [taxtrib@michigan.gov](mailto:taxtrib@michigan.gov).

d) Mediation Conference

Mediation must be conducted as provided by [Michigan Court Rule \(MCR\) 2.411\(C\)\(2\)](#). This court rule states:

The mediator shall meet with counsel and the parties, explain the mediation process, and then proceed with the process. The mediator shall discuss with the parties and counsel, if any, the facts and issues involved. The mediation will continue until a settlement is reached, the mediator determines that a settlement is not likely to be reached, the end of the first mediation session, or until a time agreed to by the parties. Additional sessions may be held as long as it appears that the process may result in settlement of the case.

The parties and the mediator choose the place, dates, and times they will meet.

Mediators have no authoritative decision-making power to resolve a case.

A mediation conference is not a meeting of a public body for purposes of the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

Within seven (7) days after mediation is completed, the mediator shall file a Mediation Status Report with the Tribunal. The Mediation Status Report must be on a form made available by the Tribunal. The form can be found [here](#).

e) Confidentiality of Mediation Conference

Statements made during a mediation conference, including statements made in written submissions, shall not be used and are not admissible in any other proceedings, including trial. Any statements, written submissions or materials, or communications between the parties or counsel of the parties and the mediator relating to the mediation are confidential and shall not be disclosed without the written consent of all parties and are not subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except for the following:

- (a) The mediator's report. The report shall be in a form prescribed by the Tribunal.
- (b) Information reasonably required by Tribunal personnel to administer and evaluate the mediation program.
- (c) Information necessary for the Tribunal to resolve disputes regarding the mediator's fee.
- (d) Consent judgments.

f) Successful Mediation

If a case is settled through mediation, the parties must file a Stipulation for Entry of Consent Judgment, with the appropriate filing fee, if any. If the Stipulation is found to be acceptable to the Tribunal, a Consent Judgment will be issued.

g) Unsuccessful Mediation

If the parties are unable to settle a case through mediation, the Tribunal will be notified by the mediator through the filing of the Mediation Status Report. (should we have a link to the form here?) Upon receipt of this Report, a Tribunal judge

will issue an order taking the case out of abeyance and a status conference will be scheduled to determine the proper course of action in the case.

#### 4. Mediator Certification

##### a) Qualifications

A mediator shall comply with the standards of conduct for mediators as provided under MCR [2.411\(G\)](#).

An individual is eligible to be a mediator if *both* of the following requirements are met:

(a) The individual has 5 years of state and local tax experience, and that experience has occurred within the 7 years immediately preceding the submission of the application.

(b) The individual is qualified as a general civil mediator under [MCR 2.411\(F\)\(2\) and \(4\)](#).

##### b) Application

To be certified as a mediator, an individual must file a mediation application with the Tribunal. The application must be on a form made available by the Tribunal. The form can be found [here](#).

The fee for the mediation application is \$50.00.

##### c) Mediator Roster

Approved mediators will be placed on the Tribunal's Mediator Roster for a period of one year.

The Tribunal may remove a certified mediator from the list of mediators as provided by [MCR 2.411\(E\)\(4\)](#).

If an individual files an application and pays the application fee but is not certified as a mediator or is removed from the list of mediators, the individual may file a motion seeking reconsideration of the rejection or removal. The motion will be considered by the Tribunal chair.